

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELANO FARMS COMPANY, a)
Washington corporation, THE SUSAN)
NEILL COMPANY, a California)
corporation, LUCAS BROS.)
PARTNERSHIP, a California)
Partnership,)
Plaintiffs,)
v.)
THE CALIFORNIA TABLE GRAPE)
COMMISSION,)
Defendant.)

CASE NOS. CV-F-96-6053 OWW DLB
CV F-96-6198 OWW DLB

**ORDER GRANTING DEFENDANT
CALIFORNIA TABLE GRAPE
COMMISSION'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING IN PART AND DENYING IN
PART PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Upon consideration of Defendant California Table Grapes Commission's Motion for Summary Judgment (Doc. 289) and supporting papers; Plaintiffs Delano Farms Co., The Susan Neill Co., and Lucas Brothers Partnership's opposition memorandum and supporting papers; and the stipulations and arguments of the parties, IT IS HEREBY ORDERED THAT the Commission's Motion for Summary Judgment is GRANTED for the reasons set forth in the Court's Memorandum Decision dated March 28, 2008 and filed March 31, 2008 (Doc. 361).¹

Upon consideration of Plaintiffs' Motion for Partial Summary Judgment and/or Summary Adjudication of Issues (Docs. 311 & 312) and supporting papers; the Commission's opposition memorandum; and the stipulations and arguments of the parties, IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Partial Summary Judgment and/or Summary Adjudication of Issues is

¹ Although, as noted below, the Court did not accept one alternative argument presented by the Commission, the Court's decision mandates entry of judgment in full with respect to Plaintiffs' First Amendment claims.

1 GRANTED IN PART and DENIED IN PART for the reasons set forth in the Court's Memorandum
2 Decision dated March 28, 2008 and filed March 31, 2008 (Doc. 361).

3 Specifically, the Court held as follows:

- 4 1. The Commission's motion for summary judgment on the ground that the Table Grape
5 Commission is a governmental entity that engages in government speech within the
6 meaning of *Johanns v. Livestock Marketing Ass'n.*, 544 U.S. 550 (2005), is
7 GRANTED, and Plaintiffs' motion for partial summary adjudication on this issue is
8 DENIED.
- 9 2. Plaintiffs' motion for partial summary adjudication that the Table Grape Commission
10 is governed by *United Foods, Inc. v. United States*, 533 U.S. 405 (2001), is DENIED.
- 11 3. Plaintiffs' motion for partial summary adjudication on the ground that the *Central*
12 *Hudson* test, *Central Hudson Gas & Electric Corp. v. Public Service Commission of*
13 *New York*, 447 U.S. 557 (1980), has no application to the resolution of Plaintiffs'
14 First Amendment challenge to the Ketchum Act is GRANTED, and the
15 Commission's motion for summary judgment on that ground is DENIED.
- 16 4. The Commission's motion for summary judgment on the ground that its activities are
17 germane to valid legislative objectives within the meaning of *Abood v. Detroit Board*
18 *of Education*, 431 U.S. 209 (1977), is GRANTED.
- 19 5. The Commission's motion for partial summary judgment on the grounds that The
20 Susan Neill Company lacks standing to obtain relief and the Lucas Brothers
21 Partnership lacks standing to obtain prospective as opposed to past relief is
22 GRANTED, and Plaintiffs' motion for summary adjudication on this issue is
23 DENIED.

24
25 Because this order granting the Commission's Motion for Summary Judgment disposes of
26 Plaintiffs' First Amendment claims and Plaintiffs' other claims already have been finally dismissed
27
28

1 with prejudice, the Clerk of this court will enter judgment, dismissing this action in its entirety, with
2 prejudice, and awarding the Commission its costs of suit as taxed by the clerk.

3
4 **IT IS SO ORDERED**

5
6 Dated: April 15, 2008

/s/ OLIVER W. WANGER_____

7 Oliver W. Wanger
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28